

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.477 OF 1987

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

NR PARMAR
VERSUS
DGP & ANR.

Appearance:

MR YN OZA for petitioner
MR SN SHELAT, Addl. Adv. General with
MR PREMAL JOSHI for Respondents No.1 & 2
MR A. MANAVALAN for MR SV RAJU for
Respondents No.3, 5, 9 & 11
None present for other Respondents

Coram: MR.JUSTICE S.K. Keshote,J

Date of decision: 8/12/2000

C.A.V. JUDGMENT

#. Heard the learned counsel for the parties.

#. It is not in dispute that the private respondents were adjudged unsuitable for promotion by the Departmental Promotion Committee in which the petitioner was adjudged suitable for promotion to the post of police inspector. The petitioner was given accordingly promotion. As in later years the private respondents were given promotion to the post of police inspector naturally they were assigned seniority in the cadre aforesaid below the petitioner. Some of the private respondents, i.e. respondents No.3, 4, 5, 10, 12, 13, 14, 16, & 17 filed Special Civil Applications before this court in which the petitioner or other persons who were placed senior to them have not been impleaded as party. In those petitions, the petitioners therein sought leave to withdraw their petitions for making representations to the State Government and accordingly the petitions were disposed of. The other private respondents directly filed representations to the State Government. Without hearing the petitioner and other affected persons, the State Government has passed the order giving deemed date of promotion to those persons which resulted in loss of seniority to the petitioner in the cadre concerned and which gives rise cause to the petitioner to approach this court by filing this petition.

#. Earlier only one private respondent was there but as other private respondents were given deemed date of promotion, by amendment of petition, they were also impleaded as party.

#. The petitioner has filed a chart of these officers to show how they have been given benefits of deemed date of promotion.

#. The contention raised by learned counsel for the petitioner is that once these respondents have been adjudged unsuitable for promotion to the post of police inspector, the State Government has no authority to give them the deemed date of promotion. If for some reasons their cases are to be considered, the matter has to be sent for review before Departmental Promotion Committee where all the cases could have been considered and in case the Departmental Promotion Committee adjudges them suitable, then those benefits from deemed date could have been given but not as what it is done by the State

Government by a stroke of pen.

#. The Addl. Advocate General pressed in service for this action of the State Government, a Circular of the State Government dated 30th March, 1970.

#. Though the Circular is there but where the promotions are to be made on the recommendation of the Departmental Promotion Committee and the Departmental Promotion Committee adjudged unsuitable these persons, the matter has to be sent back for review to the Departmental Promotion Committee and only thereafter, accordingly as recommended by that committee, deemed date of promotion could have been given. Here, in this case, on simple representation of the private respondents, these orders have been passed, meaning thereby, the case of the petitioner vis-a-vis those persons for promotion from deemed date of promotion given to them, has not been considered. Whether the criteria for promotion is seniority-cum-merit or seniority-cum-suitability or proved merit or efficiency is not material here but the course which has been adopted by the State of Gujarat on the representations of the private respondents is wholly against the basic principles of natural justice and fair play. On the representations, if the State Government considered that some material has been produced by those persons for review of their cases for promotion from the deemed date, the matter should have been sent to the Departmental Promotion Committee where it would have considered the cases of those persons along with all other persons eligible for promotion and then on the basis of the recommendation made by Departmental Promotion Committee, appropriate relief could have been granted.

#. In the result, this writ petition succeeds and the action of the respondents No.1 and 2 to give deemed date of promotion and consequential seniority to private respondents, i.e. respondents No.3 to 17 is declared illegal and arbitrary. The respondents No.1 and 2 are directed to send for review of cases of those persons of promotion along with the petitioner's case for consideration thereof for deemed date of promotion, to the Departmental Promotion Committee and on the basis of recommendations as made by the Departmental Promotion Committee, accordingly, relief to be granted to these persons and the seniority list has to be accordingly finalized. The case of the petitioner thereafter be considered accordingly for promotion to the post of Dy. Superintendent of Police as per his seniority position which reflects after completion of this exercise. Rule

is made absolute accordingly. The respondent-State of Gujarat is directed to pay Rs.2,000/- as costs of this petition to the petitioner.

.....

(sunil)